



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

FEB 27 2004

William E. Johnson, Esquire
Johnson, Judy, True & Guarnieri, LLP
326 Main Street
Frankfort, Kentucky 40601-1887

RE: MUR 5268

Dear Mr. Johnson:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that the Kentucky State District Council of Carpenters, Steve Barger, Don Mitchell, and Thomas Schultz violated 2 U.S.C. §§ 441b and 441f, and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

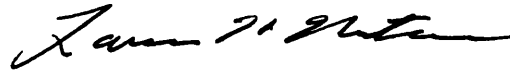
If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Finally, this Office will request that your clients execute an agreement to extend the statute of limitations before granting a request for an extension of time.

Mr. William Johnson
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Ann Marie Terzaken at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

2025-04-23 14:00:00

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Kentucky State District Council of Carpenters

Steve Barger

Don Mitchell

Thomas Schulz

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MUR 5268

GENERAL COUNSEL'S BRIEF

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I. STATEMENT OF THE CASE

This matter was generated based upon information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

On May 9, 2002, the Commission found reason to believe that the following parties knowingly and willfully violated 2 U.S.C. §§ 441b and 441f:

- Kentucky State District Council of Carpenters ("KSDCC");
- Steve Barger, Executive Secretary-Treasurer and Business Manager of KSDCC;
- Don Mitchell, Political Director of KSDCC; and
- Thomas Schulz, General Counsel and Assistant Business Manager of KSDCC.

(Collectively referred to herein as "the KSDCC respondents").

The basis for these findings was information indicating that KSDCC, a labor organization representing carpenters and other crafts persons within the State of Kentucky, and certain of its officers, may have coerced its field representatives, who are both employed by KSDCC and members of the union, into making political contributions to federal candidates and assisting the campaigns of federal candidates under the threat of job loss and/or other consequences. Representatives who resisted making political contributions were allegedly advised to use the funds from their monthly expense allowance issued by KSDCC, and those who worked on campaigns were allegedly instructed to reflect the time for such work on their timesheets as "membership education."

II. OVERVIEW

There are many ways in which labor organizations may participate in federal campaign activity within the purview of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA").¹ In this matter, the evidence obtained during a lengthy investigation revealed that the political activities of KSDCC often extended far beyond that which the Act permits, resulting in prohibited union contributions from KSDCC to specific federal candidates in the 1998, 2000 and 2002 election cycles. Further, the evidence revealed that certain union officials knew at least some of their political activities were prohibited by law and that these officials knowingly and willfully directed union employees to engage in these political activities in violation of the law, participated in a scheme to conceal these political activities to avoid detection, and engaged in activity during the discovery process designed to mislead and obstruct the Commission's investigation.

Specifically, the evidence shows that, at the request and direction of KSDCC, salaried union field representatives provided their services to federal candidates during at least the 1998, 2000 and 2002 election cycles while being paid by the union. Further, the evidence shows that certain KSDCC officials knew that this activity was prohibited by law and, in order to conceal the extent of this activity, instructed union employees to reflect the time for such activity on their timesheets and weekly activity reports as "membership education." Accordingly, this Office is prepared to recommend that the KSDCC respondents knowingly and willfully violated 2 U.S.C. § 441b(a) by providing compensation to union employees to assist the campaigns of federal candidates without charge.

¹ The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Unless specifically stated to the contrary, all citations to FECA, codified at 2 U.S.C. §§ 431 *et seq.*, and all statements of applicable law herein, refer to FECA and the Commission's implementing regulations as they existed prior to the effective date of BCRA.

1 The evidence shows that KSDCC solicited individual earmarked contributions from its
2 employees during at least the 2000 and 2002 election cycles and exerted direction and control
3 over their choice of recipient candidates and the amounts contributed. Many, if not most, of the
4 union's employees felt that they had no real choice but to make a contribution when solicited by
5 the union, that it was expected as part of their job. Some employees also admitted to feeling
6 intimidated or coerced by union officials into making the solicited contributions. In addition,
7 KSDCC bundled the solicited contributions at its union headquarters and forwarded them
8 directly to the recipient committees. Accordingly, this Office is prepared to recommend that the
9 Commission find probable cause to believe that the KSDCC respondents violated 2 U.S.C.
10 § 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii) by coercing contributions, improperly
11 facilitating contributions, and serving as a conduit for contributions.

12 The evidence also shows that KSDCC made membership communications expressly
13 advocating the election or defeat of clearly identifiable federal candidates during the 1998, 2000
14 and 2002 election cycles and that these communications likely exceeded the \$2,000 threshold for
15 reporting the costs of such communications. *See* 2 U.S.C. § 431(9)(B)(iii). Nevertheless,
16 KSDCC failed to report any membership communication costs. Accordingly, this Office is
17 prepared to recommend that KSDCC violated 2 U.S.C. § 431(9)(B)(iii) by failing to report the
18 costs of membership communications containing express advocacy.

III. SUMMARY OF FACTS

A. Organizational Background

KSDCC is a labor organization representing approximately 4,000 carpenters, millwrights, and other crafts persons within the State of Kentucky.² It is affiliated with the United Brotherhood of Carpenters and Joiners of America ("UBC"), its international union. Until 1999, the UBC and KSDCC were members of the AFL-CIO.

KSDCC is headquartered in Frankfort, Kentucky, under the direction of the Executive Staff made up of Steve Barger, as Executive Secretary-Treasurer; Tom Schulz, as Assistant Business Manager and General Counsel; and Jerry Landers, as Director of Organizing. The Assistant Business Manager and Director of Organizing report directly to the Executive Secretary-Treasurer who manages the union's day-to-day operations and reports the union's activities on a monthly basis to the Executive Board, the official governing body of the union. The Executive Secretary-Treasurer, however, is the union's top official and has the authority to make most decisions on behalf of the union without the concurrence or approval of the Executive Board. *See* Deposition of James Stephen Barger dated October 7, 2003 ("Barger Dep. I"), at 8; Deposition of Donald Ray Mitchell dated November 19-20, 2003 ("Mitchell Dep."), at 132-133.

KSDCC typically employs approximately fourteen union members as field representatives who operate out of one or more local union offices spread throughout the State.³ Each local union has one or two field representatives and an administrative assistant, with the exception of Louisville, which has three field representatives and an administrative assistant. KSDCC also employs a small support staff in Frankfort.

² KSDCC has eight local unions, which are located in Louisville (Locals 64, 2501 and 1031), Lexington (Locals 1650 and 1031), Ashland (Locals 472 and 1031), Owensboro (Local 549), Elizabethtown (Local 3223), Bowling Green (Local 3223), and Paducah (Local 357).

³ At different times, the field representatives have also been referred to as "business agents," "business representatives," "organizers," and "representative/organizers."

1 All field representatives are employed by and under the supervision and direction of Mr.
2 Barger, as the Executive Secretary-Treasurer. *See* KSDCC Bylaws and Working Rules dated
3 December 2001, at 10. Field representatives report their activities directly to Mr. Schulz and Mr.
4 Landers, who report directly to Mr. Barger.⁴ During election campaign season, field
5 representatives also report their activities to KSDCC's Political Director, Don Mitchell.

6 Field representatives have a number of responsibilities, including recruiting new union
7 members, representing current members in labor disputes and grievances, meeting with union
8 and nonunion contractors to create union jobs, providing information to members about health,
9 welfare, pension and retirement benefits, conducting training classes and participating in various
10 civic organizations and the union's political program. *See, e.g.,* Mitchell Dep., at 25-27;
11 Deposition Transcript of Jerry Wayne Coomes dated October 9, 2003 ("Coomes Dep."), at 13-
12 15. Field representatives also meet on a quarterly basis in Frankfort with the Executive Staff.⁵

13 Field representatives document their activities in weekly timesheets and weekly activity
14 reports, which are submitted to and reviewed by the Executive Staff. *See* Barger Dep. I, at 47-
15 48; Landers Dep., at 35, 188.⁶ According to union officials, one of the purposes of the
16 timesheets and weekly activity reports is to allow the union to make sure that field
17 representatives are doing what they are supposed to be doing. *See* Barger Dep. I, at 48-49;
18 Landers Dep., at 35-37. The timesheets and weekly activity reports are also reviewed before the

⁴ Field representatives are required to keep in contact with Mr. Landers at least every 1-2 days by telephone or email communication. *See* Barger Dep. I, at 45-46; Deposition Transcript of Jerry W. Landers dated October 22, 2003 (hereinafter, "Landers Dep."), at 33-34.

⁵ Two field representatives, Don Mitchell and Dan Forbis, have the title, "senior field representative," and, in addition to the activities described above, act as mentors and help coordinate the activities of the other field representatives. *See* Barger Dep. I, at 11-16.

⁶ Vacation days, sick leave, and personal time – which must be requested in writing and approved by Mr. Barger – are also documented in the timesheets and weekly activity reports. *See* Barger Dep. I, at 113-114; Landers Dep., at 37-39, Coomes Dep., at 33.

1 union approves each representative's weekly payroll voucher to verify that the person worked a
2 sufficient number of hours each week. *See* Barger Dep. I, at 50-53.

3 According to Mr. Barger, field representatives are paid by salary based upon a 45-hour
4 workweek. *See* Barger Dep. I, at 54-55. In 2003, the average weekly salary provided to field
5 representatives was approximately \$1,100, with senior field representatives receiving an
6 additional 10 percent. *See id.* at 54; Landers Dep., at 32-33; *see also* Mitchell Dep. Exhibit No.
7 11. In addition to their weekly salary, field representatives receive a weekly expense allowance
8 of approximately \$75 and senior field representatives receive \$125. Field representatives also
9 receive the use of a company car, a gas credit card and \$75 per month towards a cell phone. *See*
10 *id.*

11 KSDCC does not impose set working hours and, instead, requires that representatives
12 work "till they get the job done." *See* Barger Dep. I, at 54-55, 113. Field representatives "do
13 whatever's necessary to take care of business," including working early in the morning, late at
14 night, and on weekends. *See id.* According to Mr. Landers, field representatives are advised at
15 the time of hiring that they will be expected to work nights and weekends from time to time. *See*
16 Landers Dep., at 30; *see also* Coomes Dep., at 31. In fact, many field representatives work more
17 than 45 hours per week on a regular basis, some as much as 60 to 80 hours per week, without
18 overtime pay. *See, e.g.,* Barger Dep. I, at 54-55; Mitchell Dep., at 258-259; Coomes Dep., at 30-
19 31. A current field representative, for example, described his work as a "twenty-four hour job."

20 **B. Political Activity Overview**

21 As Executive Secretary-Treasurer, Mr. Barger lobbies elected officials on legislation that
22 affects working people. *See* Barger Dep. I, at 6-7. He works with elected officials to pass
23 legislation that will benefit working people and seeks to defeat legislation that the union
24 determines will have a negative effect on working people. *See id.* To accomplish these goals, it

1 has been important for the union to be politically active during election season to help elect
2 candidates who support its issues. *See* Barger Dep. I, at 21-22; *see also* Landers Dep., at 18-19;
3 Mitchell Dep., at 147-149. According to the union, its committed involvement in federal and
4 state races greatly enhances the union's position to advance its "worker friendly" agenda with
5 elected officials in Kentucky and the surrounding states. *See* "Campaign 2000 Report to the
6 United Brotherhood of Carpenters and Joiners of America" ("UBC Report").

7 According to KSDCC, the union's election campaign activity begins typically after
8 candidates file their statements of candidacy at the end of January each year. *See* Barger Dep. I,
9 at 22-24; Mitchell Dep., at 102-04. At that time, KSDCC sends each candidate a questionnaire
10 on issues important to the union. *See id.* at 104. Those candidates are then discussed with the
11 union's delegates who ultimately vote on which candidates should receive the union's
12 endorsement. *See id.* at 371.⁷ Once endorsements are made, the union's campaign activities
13 increase shortly before the primary election in the spring and then slow down until late summer.
14 *See* Mitchell Dep., at 104. In late summer, the union's campaign activities accelerate until after
15 election day in November, with the last ten weeks before the general election being the busiest of
16 each election campaign season. *See id.* at 104, 116.

17 As more fully described in the sections below, after endorsing candidates for federal,
18 state and local office, KSDCC assigns field representatives to work directly for the union's
19 endorsed candidates, solicits political contributions from its field representatives and its
20 international union's separate segregated fund, and makes communications to its members
21 urging them to vote for the union's endorsed candidates. To help coordinate these various

⁷ KSDCC's endorsement of federal candidates generally requires final approval from the UBC.

1 activities, in 1999 KSDCC appointed a senior field representative and officer of the Executive
2 Board, Don Mitchell, as the union's Political Director.

3 **C. Respondents' Knowledge of Relevant Law**

4 According to Mr. Barger, the AFL-CIO "historically" advised KSDCC (during the time
5 the two unions were affiliated) that union staff and members cannot work for federal campaigns
6 unless they do so on a volunteer basis and that the union should focus its political efforts instead
7 on educating union members and their families. *See* Barger Dep. I, at 40-41; Continued
8 Deposition of James Stephen Barger dated October 8, 2003 ("Barger Dep. II"), at 58-59. Mr.
9 Barger further testified that KSDCC routinely receives BNA reports and FEC mailings on
10 campaign finance law, which he reviews on a regular basis. *See* Barger Dep. II, at 60. In
11 addition, Mr. Mitchell testified that he learned from Mr. Schulz and from annual political
12 director's meetings held by the UBC that union employees cannot be paid for the time they
13 spend working on federal campaigns. *See* Mitchell Dep., at 42-46, 153-56.⁸

14 Further, KSDCC purportedly reminded its field representatives and members on a regular
15 basis regarding what they can and cannot do under applicable campaign finance laws. *See*
16 Barger Dep. I, at 38. Many field representatives explained that Schulz, Mitchell, and others
17 advised them at union meetings that they could participate in federal campaigns but only on their
18 own time.⁹ This advice, however, was interpreted in many ways and was also contradicted by
19 later instructions. For example, some field representatives explained that based on the
20 aforementioned advice, they believed that they could attend rallies, press conferences and

⁸ At his deposition, Mr. Mitchell provided a copy of a "UBC Political Manual" dated February 16, 1999, which he received at the UBC Political Director's Meeting in 2000. *See* Mitchell Dep. Exhibit No. 14. The manual includes a section entitled, "Legal Do's and Don'ts on Federal Campaigns," which states, *inter alia*, that volunteers must not take money from the union or a third party for any work they perform on campaigns and must remember to suspend their health and pension benefits if they take unpaid leave to work on a campaign.

⁹ During its investigation, the Commission obtained information from approximately twenty-five current and former field representatives by telephone interview and/or deposition.

1 debates and recruit members to volunteer for federal campaigns on union time, but that they
2 could only participate in other activities (such as posting signs and precinct walks) after office
3 hours and on weekends. Other field representatives apparently had no clear understanding of
4 what they could and could not do within the bounds of the law.

5 **D. Working Directly for Federal Campaigns**

6 **1. Reporting Campaign Activities to the Union: "Membership Education"**

7 The evidence shows that, for many years, KSDCC has used the term "membership
8 education" as a catch-all phrase to describe the time spent by field representatives on campaigns
9 at the request and direction of the Executive Staff. Some field representatives described
10 conversations with Mr. Landers during which he specifically instructed them to use the term
11 "membership education" in place of detailed descriptions about their campaign activities in their
12 timesheets and weekly activity reports.¹⁰ Other field representatives described similar
13 instructions from Mr. Schulz. Although a few field representatives provided slightly more detail
14 than others in their weekly documentation, it appears that all field representatives followed the
15 union's instructions regarding "membership education." Indeed, the term appears with
16 increasing frequency in their timesheets and weekly activity reports before primary and general
17 elections.

18 This Office obtained different explanations for why KSDCC required detailed narratives
19 from field representatives regarding their non-political activities and only short references to
20 "membership education" to document their political activities. A few field representatives

¹⁰ Mr. Landers testified that he instructed field representatives to use the term "membership education" rather than provide the longer narratives required by the union for non-political activities. *See* Landers Dep., at 101-02. He testified that he also advised at least one of his field representatives against drafting detailed memoranda regarding the representative's campaign activities. *See id.* at 148-49. This instruction was in response to a memorandum dated October 20, 1998 from a field representative, which documented the assistance he provided to two federal candidates, including posting campaign signs. *See* Landers Dep. Exhibit No. 7.

1 suggested that participation in campaign activities is not as important as their traditional
2 organizing responsibilities. A few other field representatives stated that they believed or had
3 suspicions that the union wanted to hide the extent of their work on campaigns. Another field
4 representative stated that he used the term because of laziness. Finally, KSDCC's own political
5 director did not offer any explanation and testified instead that he has "no idea" why the union
6 uses the term "membership education." *See Mitchell Dep.*, at 353.

7 **2. Candidate Assignments**

8 Each election year, KSDCC assigns its field representatives to work with candidates
9 endorsed by the union. The assignments are determined by Barger, Landers and Mitchell who
10 discuss which field representatives should be primarily assigned to which endorsed candidates.
11 *See Mitchell Dep.*, at 373. According to Mr. Barger, the union "tries" to ask each field
12 representative for preferences before the assignments are made, but that as pairings are made and
13 the list gets shorter, sometimes it just comes down to which field representatives and candidates
14 are left unmatched. *See Barger Dep. I*, at 127-28. Some field representatives have indicated that
15 field representatives play no role in the determination of candidate assignments.

16 In 1998, 2000 and 2002, KSDCC assigned its field representatives to work for federal,
17 state and local candidates. In 1998, field representatives were assigned to and/or assisted the
18 following federal candidates: Tom Barlow (1st Congressional District), Chris Gorman (3rd
19 Congressional District), Ken Lucas (4th Congressional District), Earnesto Scorsone (6th
20 Congressional District), and Scotty Baesler (U.S. Senate). In 2000, field representatives were
21 assigned to and/or assisted the following federal candidates: Al Gore (President), Brian Roy (1st
22 Congressional District), Eleanor Jordan (3rd Congressional District), Ken Lucas (4th
23 Congressional District), and Scotty Baesler (6th Congressional District). Finally, in 2002, field
24 representatives were assigned to and/or assisted the following federal candidates: Klint

Alexander (1st Congressional District), Jack Conway (3rd Congressional District), Ken Lucas (4th Congressional District), and Lois Combs Weinberg (U.S. Senate).

During these election years, KSDCC assigned some representatives to work for a single candidate and others to work for multiple candidates. In addition to the formal assignments, most field representatives assisted candidates to whom they were not officially assigned. *See Mitchell Dep.*, at 377-86. For example, according to Mr. Mitchell, all field representatives were involved in the Baesler and Weinberg senatorial campaigns and “probably” all were involved in the Gore/Lieberman presidential campaign. *See Mitchell Dep.*, at 377-86.

The goal of working with a candidate’s campaign has been to “make sure” the endorsed candidate is elected. *See Barger Dep. I*, at 24; *see also Barger Dep. II*, at 2; *Mitchell Dep.*, at 388. To achieve that goal, field representatives have acted as the union contact or point person for the campaigns, participated in various campaign activities (such as rallies, precinct walks, handbilling, and the posting of campaign signs), and recruited volunteers for the campaigns. *See, e.g., Coomes Dep.*, at 16.

According to the union, KSDCC provided no guidance to the field representatives regarding the amount of assistance to be provided to their assigned candidates. *See Mitchell Dep.*, at 395. Some field representatives indicated that KSDCC gave them the responsibility of determining how much time to devote to their assigned campaigns. *See, e.g., Coomes Dep.*, at 107. Others stated that union officials, including Mr. Barger and Mr. Mitchell, instructed them to do whatever it takes to get their assigned candidates elected.

3. Participation in Activities Organized by the Campaigns

Since at least 1998, field representatives have participated in a variety of campaign activities on behalf of KSDCC’s endorsed candidates. These activities have included the posting

1 of campaign signs as well as participation in precinct walks, campaign rallies, debates, press
2 conference, phone banks, handbilling, and appearances in television advertisements.

3 For example, at least fifteen current and former field representatives indicated that their
4 candidate assignments included posting campaign signs in yards and in public places for one or
5 more of the following federal candidates: Al Gore/Joe Lieberman, Eleanor Jordan, Brian Roy,
6 Lois Combs Weinberg, Jack Conway, Scotty Baesler, Tom Barlow, Clint Alexander, and
7 Ernesto Scorsone. Field representatives typically obtained the campaign signs from the
8 campaign itself or from local Democratic headquarters and either posted the signs themselves or
9 left the signs at their local union offices for other field representatives to distribute.¹¹ In most
10 cases, when they posted the signs themselves, field representatives received lists of locations for
11 where to place the signs from the campaigns. *See, e.g.,* Deposition of Lawrence William Hujo,
12 III, dated October 8, 2003, ("Hujo Dep."), Exhibit No. 2.¹²

13 Further, nearly every current and former field representative explained that they attended
14 rallies, press conferences and other campaign functions for KSDCC's endorsed candidates.
15 Attendance at these events and the recruitment of union members to attend these events is also
16 frequently documented in their timesheets and weekly activity reports. According to a current
17 field representative, posting campaign signs and attending campaign events is the largest portion
18 of a field representative's political activities. According to the union, strong attendance at

¹¹ Large campaign signs occasionally required that field representatives construct posts for the signs. In some cases, KSDCC recruited assistance from the apprentice school affiliated with the union. Through an arrangement with union officials, the candidates reportedly sent supplies to the apprentice school, and the school's instructors and apprentices constructed large campaign signs after class. The apprentice school reportedly constructed hundreds of large signs for the Gore, Jordan, and Conway campaigns in 2000 and 2002.

¹² These lists were typically fairly long and required many hours. For example, a field representative explained that he posted signs for Brian Roy in twenty counties. Another field representative estimated that he posted approximately 2,000 to 3,000 yard signs and 30-40 large signs for Jack Conway in 2002. Yet another estimated that he posted approximately 300 signs for Eleanor Jordan in a single day.

1 campaign events benefits the candidate by giving the appearance that the candidate has many
2 supporters. *See* Barger Dep. II, at 15-16; Mitchell Dep., at 405.

3 In addition to securing strong attendance at campaign events, field representatives
4 assisted endorsed candidates in the preparation leading up to events. For example, KSDCC sent
5 approximately half of its field representatives to the Danville/Richmond, Kentucky area to assist
6 the Gore/Lieberman campaign during the five days immediately preceding the vice-presidential
7 debate held at Centre College in Danville on October 5, 2000. According to the field
8 representatives who participated, the field representatives provided transportation to and from the
9 debate location for Lieberman's campaign staff and members of the press following the
10 campaign.¹³ Timesheets and weekly activity reports indicate that the field representatives
11 worked long days for the campaign during this period, some days as much as twenty hours or
12 more.

13 Moreover, at least seven current and former field representatives indicated that their
14 candidate assignments included participating in precinct walks for one or more of the following
15 federal candidates: Ernesto Scorsone, Scotty Baesler, Brian Roy, Al Gore, Eleanor Jordan, Lois
16 Combs Weinberg and Jack Conway. Participation in precinct walks is also documented in
17 timesheets and weekly activity reports. In most cases, field representatives received lists of
18 geographical locations, as well as campaign literature to be distributed to local residents, from
19 the campaigns.

¹³ During their depositions, Barger, Landers and Mitchell testified that while the union asked half of its field staff to "help out" at Centre College over a week period, they had no knowledge of what they were doing nor whether they were assisting the Gore/Lieberman campaign or the Bush/Cheney campaign. *See* Barger Dep. II, at 26-28, 54; Landers Dep., at 158-174, 181; Mitchell Dep., at 460-64. According to some of the field representatives who participated, they met with Senator Lieberman's advance staff who provided them with vans and asked that they take those associated with the campaign wherever they needed to go. As one field representative explained, "We more or less hung around until people needed to go someplace." Some representatives also stated that they assisted with parking and crowd control during the debate.

1 Field representatives have also recruited union members to volunteer for these activities.
2 In fact, current and former field representatives explained that a significant portion of their own
3 campaign activities has historically involved recruiting needed volunteers for their assigned
4 campaigns. *See also* Mitchell Dep., at 388. To assist in recruitment, each local union has a
5 Volunteer Organizing Committee ("VOC"), which is a relatively small group of union members
6 willing to donate their time to charitable, civic and political causes. According to Mr. Mitchell,
7 the VOC is a "loose term" and more like a list of union members who have volunteered in the
8 past and are willing to volunteer in the future. *See* Mitchell Dep., at 399. In any event, field
9 representatives frequently have difficulty recruiting a sufficient number of volunteers through the
10 VOC, which often results in representatives accomplishing most of the union's campaign
11 activities themselves.¹⁴

12 4. Close Interaction Between Union Employees and Campaign Staff

13 Most of the campaign activities performed by field representatives were organized by or
14 through the campaigns themselves. In fact, documentary evidence and information obtained
15 during witness interviews and depositions indicate that field representatives worked closely with
16 their assigned candidates and looked to the campaign staff for guidance and direction on where
17 to focus their efforts on behalf of the candidate.

18 At least two field representatives have had their own desks in the campaign offices of
19 federal candidates. For example, Steve Baird explained that he had a desk, phone, and filing
20 cabinet at the campaign headquarters of his assigned candidate, Brian Roy, in the Fall of 2000.

¹⁴ Certain field representatives have explained that the majority of union members are not interested in politics and only a "handful" can be relied upon to volunteer for the endorsed candidates. For example, of the approximately 900 members in Local Union 64, only 18 to 24 are currently active in the VOC. *See* Hujo Dep., at 38. Similarly, Local Union 472 has approximately 40 active members, but only 2 to 5 are generally available for any given activity. According to a current field representative, when he fails to recruit enough volunteers for his assigned candidates, "that's when you don't see the wife."

1 He further explained that he worked for the campaign during the day and tended to his union
2 organizing responsibilities at night.¹⁵ There is also information indicating that Dan Forbis had a
3 desk in Eleanor Jordan's campaign office in the fall of 2000.¹⁶ Mr. Mitchell testified that he, in
4 fact, asked both Mr. Forbis and Mr. Baird to set up desks at the campaign headquarters of
5 Eleanor Jordan and Brian Roy. *See id.* at 427. He explained that he did so because the UBC
6 encouraged the union to have higher visibility on campaigns so that when labor issues came
7 before Congress, the union would have the "ear" of the candidates they helped elect into office.
8 *See id.* at 426-27.¹⁷

9 Although not all field representatives had their own desks in campaign offices, most
10 assigned to federal candidates during one or more of the previous three election cycles
11 acknowledged that they attended meetings and had telephone conversations with the candidates

¹⁵ Based upon his timesheets, Mr. Baird's union organizing work at night, if any, appears to have been minimal. Mr. Baird documented that he worked well over forty hours per week at Brian Roy's headquarters "as the Labor Coordinator for the campaign" where he recruited union members to assist with sign making and sign distribution, scheduled campaign events for the candidate, "supplied people to attend scheduled events," coordinated precinct walks for the campaign, and recruited participation from other unions for campaign events.

¹⁶ In his weekly activity reports, Mr. Forbis noted that he went to the Jordan campaign headquarters to arrange the setting up of a desk and phone line. Also, in a memorandum to Mr. Mitchell dated October 10, 2000 regarding the Jordan campaign, Mr. Forbis stated, "I have been in daily contact with the campaign coordinator. We currently have a desk and [sic] working within headquarters." *See* KSDCC 01189-90. Notably, during a telephone interview, Mr. Forbis acknowledged that he was assigned to Eleanor Jordan's campaign in 2000 but stated that he did not have a desk or phone line, and had no involvement in setting up a desk or phone line, at the Jordan campaign because "it's illegal." After reviewing the above documents with him, he explained that he talked to someone from the AFL-CIO about setting up a desk and phone line but that the desk was used by union volunteers, not by him personally. Mr. Mitchell, on the other hand, testified that Mr. Forbis had a desk at the Jordan campaign but only for a short time. *See* Mitchell Dep., at 425.

¹⁷ During his deposition, Mr. Mitchell appeared to have difficulty reconciling his deposition testimony with sworn statements submitted earlier in the investigation by him and the other individual respondents. *See* Mitchell Dep., at 428-432. Specifically, Barger, Mitchell and Schulz submitted sworn responses to the Commission's written questions on July 3, 2002 in which all three stated that KSDCC never required or requested any union member to work in the campaign offices of federal candidates. *See* Mitchell Dep. Exhibit No. 10. Further, all three submitted sworn supplemental responses to the Commission's written questions on October 18, 2002 in which all three stated that while the union located correspondence from KSDCC to Eleanor Jordan and Scotty Baesler stating that its field representatives would work directly in their campaign offices, "it was never the intent of KSDCC that the person assigned would function in the candidate's office and the member assigned so understood that fact. . . . KSDCC does not believe any member assigned to coordinate union membership for any campaign ever worked directly in the candidate's [sic] or under the supervision of any candidate or committee." *See* Mitchell Dep. Exhibit Nos. 12, 13. Mr. Schulz made the same representations during a face-to-face meeting with the Office of General Counsel on March 6, 2003.

1 and their staff on a regular basis. One former field representative described the level of
2 interaction between the field representatives and their assigned campaigns as "constant." These
3 interactions often included discussions regarding campaign strategy and how the field
4 representatives could best help the campaign. For example, a current field representative
5 testified that he spoke to the Conway campaign approximately two to three times per week in
6 2002 and attended meetings at Conway's campaign offices to find out where the campaign
7 wanted signs placed, how many locations to try to get to within a particular day, and how many
8 volunteers were needed to post the signs. *See Hujo Dep.*, at 84-86.

9 In addition, some field representatives routinely attended formal campaign committee
10 meetings held by their assigned candidates. A former field representative explained that he
11 served on Lois Combs Weinberg's Fayette County Campaign Council in 2002 as her advisor on
12 labor issues and attended monthly breakfast meetings with the candidate to discuss campaign
13 strategy and plan activities. Similarly, another current field representative testified that he
14 attended both formal meetings of the Weinberg committee and informal meetings with campaign
15 staff approximately once a week to discuss campaign strategy, the planning of activities, and the
16 recruitment of needed volunteers. *See Coomes Dep.*, at 110, 139, 143.

17 This Office also obtained documents during the investigation that included letters from
18 Mr. Barger to candidates endorsed by the union. In these letters, Mr. Barger stated that the field
19 representative who had "volunteered" to work on the candidate's campaign "will work directly
20 in your campaign offices and will assist you in any way possible to help you win the election."¹⁸
21 In addition to state and local candidates, Mr. Barger sent these letters to at least three federal

¹⁸ Mr. Barger continued to send similar letters to state and local candidates in the Fall of 2002 (after KSDCC received notice of the Commission's reason to believe findings in this matter), however, no such letters were reportedly sent to federal candidates at that time even though the union assigned field representatives to federal campaigns in 2002.

1 candidates in 2000: Brian Roy, Eleanor Jordan and Scotty Baesler. *See* Barger Dep. Exhibit No.
2 8 (KSDCC 00908, 00928, 00937).¹⁹

3 The letters written by Mr. Barger to candidates appear to have been part of a larger effort
4 by the union leadership to involve KSDCC in the campaigns of endorsed candidates. *See*
5 Mitchell Dep., at 365. Dan Forbis, one of the union's senior field representatives, explained that
6 Barger, Schulz and Landers have each expressed a desire that the union have a more visible
7 presence in each campaign and that the union not be known simply for placing campaign signs.
8 According to Mr. Forbis, this desire resulted from instances where the union had been forced to
9 remind candidates, once they were successfully elected into office, how the union helped get
10 them elected.

11 5. Integration of Campaign Assignments and Job Responsibilities

12 Many field representatives indicated that they felt participation in campaign activity is (or
13 was) expected as part of their job, and some explained that they did not feel they had the choice
14 to refuse a candidate assignment or decide not to attend a specific campaign event when asked or
15 instructed by union officials, including events scheduled on nights and weekends.²⁰ KSDCC, on
16 the other hand, has vigorously denied that working for union's endorsed candidates has ever
17 been part of a field representative's job responsibilities. At the same time, the deposition
18 testimony of Mr. Barger, the top official of KSDCC, appears to undermine the union's denial.
19 More particularly, when asked during his deposition whether field representatives determine
20 whether or not to attend a particular campaign rally, he responded:

¹⁹ Linville Hopper, whom the union assigned to Scotty Baesler in 2000, testified that, after these letters were sent, he advised Mr. Barger that he would not work directly in Mr. Baesler's campaign office because it was illegal to do so. *See* Deposition of Linville Hopper dated October 21, 2003 ("Hopper Dep."), at 113-16

²⁰ A current field representative explained that he feels he has the choice of deciding whether or not to participate in campaign activities but that he knows he is expected to participate and that, if he decides not to attend a campaign event after being asked by the union to do so, "someone will want to know why "

1 Yes, ma'am. *They're very well paid; I imagine they know their*
2 *job, and it's up to them to take care of business.* I found out a long
3 time ago, you can't get people to do the right thing if you're trying
4 to see what size shirt they wear – if you look over people's
5 shoulders every day. *You give them the responsibility and it's up*
6 *to them to do the job.*

7
8 Barger Dep. II, at 12 (emphasis added). Mr. Barger further testified:

9 The field representatives understand what our endorsed candidates'
10 issues are, and we don't say, 'Do this today or do this tomorrow.'
11 They understand the assignment, and then it's up to them to
12 implement the assignment, which is to help our candidate get
13 elected. If there's a dinner, we attend, for our people want to get
14 them elected, *and their job is to assist in doing that.*

15
16 *Id.* at 11 (emphasis added).

17 This testimony suggests that the field staff's job responsibilities and their candidate
18 assignments were extensively integrated. This conclusion is further supported by the fact that no
19 field representative reportedly refused a candidate assignment, and all field representatives
20 documented the hours they spent on campaigns in their timesheets and weekly activity reports.
21 Although some representatives were more descriptive than others in documenting campaign
22 activity, all field representatives logged political hours in their timesheets since at least 1998.
23 According to one current field representative, he documented the time he spent attending
24 campaign rallies because, "I like for my boss to see that I'm working hard." *See* Hujo Dep., at
25 81.

26 Further, a few field representatives contacted by this Office stated that they felt that they
27 could be fired or suffer adverse consequences on the job if they failed to participate in campaign
28 activities. Some of them described instances where union officials reprimanded them for failing
29 to attend rallies or other campaign events. One field representative explained that Forbis,
30 Landers and Schulz reprimanded him for failing to attend campaign events, stating to the effect

1 that: "I'm telling you that this comes from Mr. Barger and when we tell you to be there, you
2 need to be there." Another described comments made by other field representatives about
3 making sure that they complete their campaign assignments "or otherwise you know what's
4 probably going to happen to you."²¹

5 Moreover, some field representatives explained that they heard complaints or
6 "grumbling" voiced among their colleagues, outside the presence of the Executive Staff, about
7 having to work on campaigns. A few others explained their impression that some of their
8 colleagues were afraid to speak out about the campaign work. As a current field representative
9 described, "A lot of guys did not want to speak out about it because they were afraid. . . . You
10 know, you could lose your job. . . . You just feel intimidated."

11 Nevertheless, the respondents maintain that the field representatives "volunteered" to
12 assist the union's endorsed candidates on their own personal time and that the union had not paid
13 any of its field representatives for the time they spent assisting their assigned candidates. At the
14 same time, the respondents had no explanation for why field representatives recorded this
15 purported "personal time" on their timesheets and weekly activity reports. Of the approximately
16 twenty-five current and former field representatives contacted by this Office, there were a variety
17 of answers to the question of whether they worked for candidates on their own time, with some
18 who acknowledged and others who denied that their union salary compensated them for the time
19 they spent working on campaigns. In addition, there were others who either refused or declined
20 to answer this specific question at all. Notably, one field representative, who at first denied that
21 he was paid by the union to work on campaigns, later stated that his weekly salary from KSDCC

²¹ This particular field representative stated that he believed these comments were made in jest but that someone probably took them seriously.

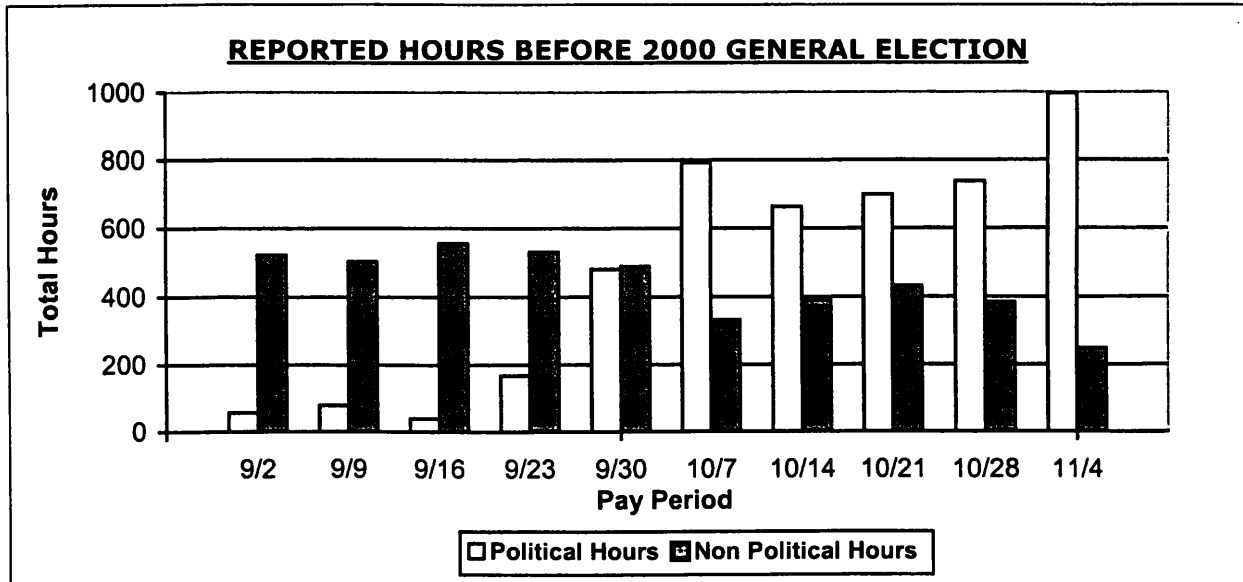
1 gave him the "freedom" to work on campaign activities whereas union members who did not
2 have this "freedom" were harder to find for volunteer work.

3 Importantly, the hours logged by field representatives during the weeks leading up to
4 primary and general elections demonstrate a shift in their work priorities from organizing and
5 other nonpolitical activities to assisting the endorsed campaigns, both state and federal. For
6 example, the chart below illustrates the rise in campaign activity noted in the timesheets and
7 weekly activity reports between September and November 2000.²² By the sixth week before the
8 general election, the number of hours logged for political activity roughly equaled the hours
9 logged for non-political activity. During the last five weeks before the election, the number of
10 hours logged for political activity increasingly exceeded the hours logged for non-political
11 activity. Finally, during the last week, twenty individuals logged a total of at least 937 hours for
12 political activity (46.9 hours per person) and 278 hours for non-political activity (13.9 hours per
13 person). *See* Chart 1, below.²³

²² The timesheets and weekly activity reports were examined to determine the number of hours logged for political activity. This examination took into account hours logged under the categories "membership education," "special assignment," and "attending political functions," which are terms that field representatives explained they used exclusively to reference political activity on their timesheets during campaign season. The examination also took into account hours logged for "travel" in instances where the only other activity reported on a particular day was political activity. The examination did not take into account instances where a field representative noted political activity on his weekly activity report but did not clearly mark the number of hours for the activity on his corresponding timesheet

²³ Importantly, no field representatives used vacation time or unpaid leave for the time they spent working on campaigns during the previous three federal election cycles. *See* Barger Dep. II, at 45, Mitchell Dep., at 475.

Chart 1



1 Based upon weekly salaries and the total hours worked, it appears that, between
2 September and November 2000, KSDCC provided as much as \$92,000 in free labor to the
3 union's endorsed candidates.²⁴

4 Some field representatives acknowledged that, as a general matter, their participation in
5 campaign activity intensified during the months and weeks leading up to general elections. For
6 example, one current field representative explained that they "really crank up the hours [on
7 campaign activity] just prior to the election." Another current field representative explained that
8 political activity becomes "heavy" during the two months before the general election, with
9 workdays ranging from three hours to the entire day devoted to his assigned campaigns.
10 Moreover, Mr. Landers testified that, on occasions where Mr. Mitchell's campaign assignments
11 created a scheduling conflict with field representatives' organizing responsibilities, he would try

²⁴ Since the time spent by KSDCC's field staff on their candidate assignments was not truly "volunteer" but, rather, part of the staff's job responsibilities, the \$92,000 figure incorporates the time spent by staff on campaigns during and after traditional business hours. This figure also includes time spent on federal, state, and local campaigns.

1 to accommodate Mr. Mitchell as much as possible. *See* Landers Dep., at 116; *accord* Mitchell
2 Dep., at 120-21.

3 The above information suggests that the field staff's campaign assignments took priority
4 over their non-political responsibilities and, at times, largely usurped their working hours, with
5 little or no attempt made to make up those hours. Some field representatives acknowledged that
6 they made little or no attempt to make up their work hours, with at least two noting their long
7 hours throughout the year as justification for not making up their hours during campaign season.
8 Others explained the difficulty in distinguishing between working hours and personal time
9 because field representatives have no set hours and frequently work nights and on weekends.
10 *See, e.g.*, Hujo Dep., at 108-09.²⁵

11 The evidence also shows that a substantial portion of the hours spent on campaign
12 activity was in connection with federal campaigns.²⁶ First, KSDCC assigned certain field
13 representatives to work primarily for federal candidates. For example, in 1998, KSDCC
14 assigned Dan Forbis to work primarily for Chris Gorman's congressional campaign and Ron
15 Henderson to work primarily for Earnesto Scorsone's congressional campaign. In 2000, KSDCC
16 hired Linville Hopper to work exclusively for Scotty Baesler and assigned Steve Baird to work
17 primarily for Brian Roy and Dan Forbis to work primarily Eleanor Jordan—all federal
18 campaigns.²⁷ In 2002, KSDCC reportedly did not formally assign field representatives to

²⁵ Mr. Mitchell testified that he did not recall providing any instruction to field representatives regarding whether or not they could spend an entire workday on campaign activities and that he has made no effort to keep track of how much time field representatives spend on their candidate assignments, including the extent to which they participate in campaign activities on union time. *See* Mitchell Dep., at 361, 369-70. Further, Mr. Mitchell testified that even he participated in campaign activities on union time. *See id.*, at 468-469

²⁶ Given KSDCC's misleading use of the term "membership education" to describe all political activity in union records, the documents submitted by KSDCC do not provide an exact accounting of the number of hours devoted to federal candidates versus state and local candidates during the previous three election cycles.

²⁷ Notably, Steve Baird logged approximately 380 out of 530 hours in his timesheets for political activity between September and November 2000 (42 hours per week for nine weeks)

1 specific federal candidates; however, Ron Henderson and Jerry Coomes worked substantially for
2 Lois Combs Weinberg, Don Mitchell and Steve Baird worked substantially for Klint Alexander,
3 and Dan Forbis and Lawrence Hujo worked substantially for Jack Conway.

4 Second, unlike most state and local races, KSDCC allocated more than one field
5 representative to assist each targeted federal campaign. For example, in 1998, all field
6 representatives assisted the Scotty Baesler campaign, and multiple field representatives assisted
7 the Earnesto Scorsone, Chris Gorman and Tom Barlow campaigns. In 2000, all field
8 representatives assisted the Gore/Lieberman campaign, and multiple field representatives
9 assisted the Eleanor Jordan, Scotty Baesler, and Brian Roy campaigns. In 2002, all field
10 representatives assisted the Lois Combs Weinberg campaign, and multiple field representatives
11 assisted the Klint Alexander and Jack Conway campaigns. Notably, a former field representative
12 explained that, as compared to state and local campaigns, the work on federal campaigns was the
13 "most intense" because field representatives had more counties to cover and, therefore, more
14 work to be done.

15 KSDCC's focus on federal activity can be best be seen during 2000, when the
16 presidential election led to increased efforts by the field representatives. *See* Chart 1, *supra*.
17 During the ten weeks before the general election, field representatives documented
18 approximately 4,600 hours for political activity. By contrast, in 2002, field representatives
19 documented approximately 1,600 hours during the same time period. Although a reduction in
20 staff in 2002 undoubtedly contributed to the reduction in total hours devoted to political activity
21 that year, the timesheets and weekly activity reports indicate that individual field representatives
22 worked many more hours on political activity during the 2000 presidential election year than in
23 2002. In addition, in its 2000 Report to the UBC, KSDCC boasted that the union participated in

1 a "record number of rallies, precinct walks, mailings and other activities," "helped organize
2 successful pro-labor events for [the union's] endorsed congressional candidates, as well as Vice
3 President and Mrs. Gore and President Clinton," and "provided drivers for the U.S. Vice
4 Presidential debate." *See* Cover Letter to 2000 UBC Report. KSDCC further boasted that all
5 field representatives worked on all three targeted congressional races – Brian Roy, Eleanor
6 Jordan and Scotty Baesler. *See* Executive Summary to 2000 UBC Report.

7 **6. Hiring of Additional Staff to Work Solely on Campaigns**

8 The evidence shows that, on at least one occasion, KSDCC hired temporary employees
9 for the sole purpose of assisting the union's endorsed candidates. First, minutes from Executive
10 Board meetings in October and December 2000 indicate that KSDCC hired three union members
11 – Linville Hopper, Laurel Pennington, and Chris McGlone – as "membership education interns"
12 on a temporary basis during the six-week period before the general election in 2000, the period
13 during which KSDCC was most involved in its endorsed campaigns.²⁸ During their six-week
14 tenure, the union reportedly paid each of them approximately \$750 per week plus benefits for
15 total compensation over \$13,500. *See* Barger Dep. II, at 49-50.²⁹ Second, the timesheets and
16 weekly activity reports prepared by Hopper, Pennington, and McGlone indicate that all three

²⁸ Union minutes of meetings of KSDCC's Executive Board on October 21, 2000 reported that these "membership education interns" were hired effective September 26, 2000. *See* KSDCC 00139 Union minutes of an Executive Board meeting on December 16, 2000 reported that the tenure of these individuals as "membership education interns" ended on November 10, 2000, just four days after the general election *See* KSDCC 00153

²⁹ Mr. Hopper testified that he believed the UBC later reimbursed KSDCC for at least part of his weekly salary. *See* Hopper Dep., at 6-7. KSDCC has stated that although it had expected to received reimbursement for Mr Hopper's salary, that reimbursement never occurred.

1 spent almost all of their time on campaign activity, with the only exception being time spent on
2 general administration and to attend union meetings.³⁰

3 Importantly, Mr. McGlone represented to this Office that the union explained at the time
4 he was hired that the reason for his hiring was that the field representatives were busy attending
5 political functions and activities out of town and that he was needed as extra staff to help out the
6 field representatives in his area. He also stated that most of his work involved campaign
7 activities for the Gore/Lieberman campaign and various state and local candidates. By contrast,
8 Mr. Pennington insisted that he was hired as a union organizer and that he only participated in
9 campaign activities to make a good impression. He acknowledged assisting the Gore/Lieberman
10 campaign as well as state and local campaigns but insisted, despite the documentation in his
11 timesheets and weekly activity reports, that he did so on his own personal time.

12 Finally, Mr. Hopper testified that KSDCC explained to him that he was being hired
13 temporarily for the campaign season. *See* Hopper Dep., at 108-09. *See* at 36. According to Mr.
14 Hopper, KSDCC assigned him to the Scotty Baesler campaign and also appointed him as the
15 "frontline coordinator" to work directly with the AFL-CIO on the Baesler campaign. *See id.* at
16 25-26. He testified that he was hired to work solely on the campaign because the field

³⁰ During his deposition, Mr. Barger denied that these individuals were hired to work on campaign activity. *See* Barger Dep. II, at 49-51. He testified that they were hired instead to conduct traditional organizing work just like the "field representative interns" that were also noted in the union minutes as having been hired at that time, however, when asked why the union designated certain new field representatives as membership education interns and others as field representative interns, his only response was: "Ma'am, I wrote the minutes, and I don't know why." *See id.* at 47-48, 50. He further testified that he does not recall why their tenure ended shortly after the general election but explained that, "[w]hatever they were doing got finished up." *See id.* at 49. Similarly, Mr. Landers testified that he did not know whether or why McGlone, Pennington and Hopper were hired as "membership education" interns. *See* Landers Dep., at 197-201. Nevertheless, his weekly activity reports, which were submitted months after his deposition, indicate that Mr. Landers was the union official responsible for hiring Mr. McGlone. In his report dated September 30, 2000, Mr. Landers stated that he "[c]ontacted Chris McGlone to see if he was interested in working for the District Council as a political intern until November 10, 2000" and later "[m]et with Chris McGlone to complete his paperwork for Membership Education Intern." Moreover, in his timesheet dated November 11, 2000, Mr. Landers stated that he met with "Chris McGlone, Linville Hopper and Larel Pennington to debrief them on their election activities."

1 representative in his area, Ronald Henderson, had too much work to do. He explained that he
2 posted campaign signs for Scotty Baesler once or twice each week, distributed campaign
3 literature to AFL-CIO union members, participated in precinct walks, contacted Baesler's
4 campaign manager once a week to receive information about upcoming campaign events and
5 recruit volunteers to attend those events, and participated in phone banks for Scotty Baesler that
6 were organized by the local Democratic Party headquarters. *See id.* at 25, 28, 31, 39, 41, 45, 60,
7 63. He also confirmed that he did not perform any traditional union organizing work during his
8 six-week tenure. *See id.* at 102-03.

9 **E. Contributions to Federal Candidates**

10 Since at least the 2000 election cycle, KSDCC has solicited and monitored contributions
11 by its employees to federal candidates endorsed by the union.³¹ Before general and primary
12 elections, KSDCC informed field representatives of the "opportunity" to contribute. Mitchell
13 Dep., at 279; Barger Dep. I, at 62; Landers Dep., at 58. KSDCC also suggested which
14 candidates to support, the amount to contribute, and the date by which to do so. *See Mitchell*
15 *Dep.*, at 279-280. KSDCC then collected the contributions from the field representatives,
16 packaged the contributions together, and forwarded them directly to candidates' committees. *See*
17 *Barger Dep. I*, at 75. This process resulted in 100% participation—every field representative
18 who was solicited eventually contributed.

19 **1. The Similar Timing and Amount of Contributions**

20 During the 2000 and 2002 election cycles, each field representative contributed a nearly
21 identical amount to candidates endorsed by KSDCC. Additionally, KSDCC requested that its
22 parent union, the UBC, contribute to these same candidates through UBC's separate segregated

³¹ Although KSDCC admits to soliciting contributions from its employees only during the 2000 and 2002 election cycles, some field representatives stated that the practice had been in effect for many years before then.

1 fund, the Carpenters Legislative Improvement Committee ("CLIC"). *See* Mitchell Dep., at 271-
2 272. Both CLIC and the field representatives sent their contribution checks to KSDCC's office,
3 where staff bundled them and later sent them to the candidates.

4 In 2002, KSDCC employees contributed comparable amounts to the four congressional
5 candidates endorsed by the union: Clint Alexander, Jack Conway, Lois Weinberg, and Ken
6 Lucas. That year, fifteen field representatives each contributed fifty or one-hundred dollars to
7 each candidate's primary and general election campaigns, while Steve Barger contributed \$200
8 to each campaign, for a total of \$12,950.³² *See* Chart 2.

Chart 2

KSDCC EMPLOYEE	2002 PRIMARY ELECTION CONTRIBUTIONS				2002 GENERAL ELECTION CONTRIBUTIONS			
	Alexander Cmte	Conway Cmte	Weinberg Cmte	Lucas Cmte	Alexander Cmte	Conway Cmte	Weinberg Cmte	Lucas Cmte
Aubrey, Fredrick	\$100	\$100	\$100	\$100	*	*	*	*
Baird, Steven	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Barger, Steve	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Coomes, Jerry	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Fleitz, Joseph M.	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Forbis, Daniel	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Fouts, Rick	*	*	*	*	\$50	\$50	\$50	\$50
Henderson, Ronald	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Houchins, Thomas	\$100	\$100	\$100	\$100	*	*	*	*
Hujo, Lawrence	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Landers, Jerry	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Lauderdale, Bruce	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Metcalf, Scott	*	*	*	*	*	*	*	\$50
Mitchell, Donald	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Perry, Randall	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Pickard, Jimmie	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100
Reliford, Ed	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$0
Wireman, Tim	\$100	\$100	\$100	\$100	\$100	\$100	\$100	\$100

*Employees who did not contribute were either not on staff at the time or were not solicited because they were new hires

³² At the request of KSDCC, CLIC also contributed \$5,000 to each of three candidates

In 2000, KSDCC supported four congressional candidates in Kentucky: Scotty Baesler, Eleanor Jordan, Ken Lucas, and Brian Roy. Approximately fifteen field representatives each contributed seventy-five dollars to the primary campaigns of these candidates and one hundred dollars to the general election campaigns of each candidate, for a total of \$8,625.³³ See Chart 3.

Chart 3

KSDCC EMPLOYEE	2000 PRIMARY ELECTION CONTRIBUTIONS				2000 GENERAL ELECTION CONTRIBUTIONS		
	<i>Baesler Cmte.</i>	<i>Jordan Cmte.</i>	<i>Lucas Cmte.</i>	<i>Roy Cmte.</i>	<i>Baesler Cmte.</i>	<i>Jordan Cmte.</i>	<i>Roy Cmte.</i>
Aubrey, Fredrick	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Baird, Steven	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Barger, Steve		\$75		\$75	\$100	\$100	\$100
Coomes, Jerry	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Fleitz, Joseph	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Forbis, Daniel	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Garrison, Michael	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Glass, Roger	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Henderson, Ronald	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Huddleston, David	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Landers, Jerry	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Lyon, Ralph	\$75	\$75	\$75	\$75			
Mitchell, Donald	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Pickard, Jimmie	\$75	\$75	\$75	\$75	\$100	\$100	\$100
Wireman, Tim	\$75	\$75	\$75	\$75	\$100	\$100	\$100

2. The Process for Soliciting and Collecting Contributions

Don Mitchell managed the process of soliciting and collecting contributions from KSDCC employees in consultation with Steve Barger. See Mitchell Dep., at 280, 282, 289, 297, 305, 308, and 318; see also Barger Dep. I, at 65-67. The same process was employed year after year: Mr. Mitchell would inform field representatives of which candidates to support, how much

³³ Likewise, CLIC contributed \$10,000 to each of three candidates in 2000.

1 to contribute, and a deadline of when contributions needed to be sent to the union office.

2 Contributions were sent to the union office at the instruction of Mr. Barger, who believed that the
3 contributions would have a greater impact if they were packaged together. *See* Barger Dep. I, at
4 77.

5 Don Mitchell and the Executive Staff regularly contacted field representatives who did
6 not send their contributions to the union office by the deadline. For example, one field
7 representative stated that Mr. Mitchell called him several times to inquire why his contribution
8 had not yet been received. A different field representative stated that Mr. Barger called him at
9 home one evening, demanding to know why he had not mailed his contribution. Mr. Mitchell
10 acknowledged that he routinely contacted field representatives who had not contributed by the
11 deadline, though he maintained that he did so only to inquire whether they were planning to
12 contribute. *See* Mitchell Dep., at 323-324. Mr. Barger testified that he does not recall whether
13 he ever telephoned field representatives to follow up on the union's requests for contributions,
14 but he claimed that the contributions were completely voluntary. Barger Dep. I, at 86-87.

15 Once field representatives sent their contributions to the union office, the office manager
16 checked off their names on lists that were maintained for each candidate. *See* KSDCC 00301.
17 Records were also created to note who contributed to which candidate and the amount of the
18 contribution. *See* KSDCC 00239. Once all contributions were received and recorded, the office
19 manager drafted cover memos to each candidate on KSDCC letterhead listing the names of the
20 individual contributors and the aggregate total of the contributions. *See* KSDCC 00314. Finally,
21 the office manager would send the memorandum along with the individual contributions directly
22 to the candidate's campaign office.

1 KSDCC also collected and processed contributions from CLIC, the separate segregated
2 fund of the UBC, to federal candidates in Kentucky. After CLIC sent its contributions to
3 KSDCC's office, Mr. Barger then attached his own cover letter to the candidate—using KSDCC
4 stationery—informing the candidate of the enclosed CLIC contribution. At least one candidate,
5 Scotty Baesler, responded to Barger with a letter thanking him for the CLIC contribution. *See*
6 KSDCC 00370.

7 3. The Pressure and Burden to Make Contributions

8 Although KSDCC asserts that field representatives have voluntarily contributed to
9 candidates over the years, many current and former field representatives have stated that
10 contributing to candidates was a required part of their job. One field representative, for example,
11 stated that Mr. Barger informed employees that they needed to follow all instructions by Don
12 Mitchell about political activities. This field representative thus concluded that “resistance was
13 not an option” and made the suggested contributions to candidates. A different field
14 representative also echoed this sentiment, stating, “I felt like it [contributing] was part of the job.
15 ... there was no choice. You made ‘em.” Another field representative stated that he is a
16 Republican and would not have not have contributed to the Democratic candidates endorsed by
17 KSDCC were it not for the explicit instructions to do so. These comments are representative of
18 many others who felt that they had no choice but to comply with KSDCC's suggestion to
19 contribute to candidates.

20 Not only did many field representatives believe that they were required to contribute to
21 candidates, but some also thought that they would face reprisals if they did not contribute. One
22 field representative estimated that 90% of field representatives complained among themselves
23 about the contributions, but few voiced concerns to the Executive Staff for fear of retribution.
24 Another field representative confirmed that even complaining about the contributions could lead

1 to “los[ing] your job in a minute.” These sentiments were corroborated by another individual
2 who overheard field representatives talking among themselves about how they needed to
3 contribute to keep their jobs.

4 In addition to feeling pressured to make contributions, most field representatives stated
5 that making contributions burdened themselves or others financially. *See, e.g.,* Coomes Dep., at
6 70-71. For example, one field representative stated that he told a senior colleague that he could
7 not afford the suggested contributions because he provided the sole income for his family. The
8 colleague told the field representative that refusing to contribute would likely lead to dismissal.
9 This field representative explained that he then appealed to Don Mitchell, who said Mr. Barger
10 would have to be consulted, and that Mr. Mitchell and Mr. Barger subsequently decided to lower
11 the suggested contribution for him. The field representative further stated that he still believed
12 that the amount would be financially burdensome but agreed to make the contribution because he
13 feared he would be fired if he refused.

14 Other field representatives who complained about the financial strain of the contributions
15 stated that they were told that their weekly expense allowance would allow them to fund the
16 contributions. One field representative, for example, claims that after he asked Mr. Barger
17 whether he was required to contribute, Mr. Barger told him, “That’s what your expense check is
18 for. It’s for the candidate.” Similarly, a different field representative stated that when people
19 complained about contributing, Mr. Mitchell told them to use their expense allowance.³⁴
20 Another field representative noted the similarity between the weekly expense allowance and the
21 suggested weekly contribution amount—\$75 per week in 2000—but stated that nobody
22 explicitly told him to use weekly allowance for contributions.

³⁴ Neither Mr. Mitchell nor Mr. Barger recalled telling a field representative to use his expense allowance to pay for contributions. *See* Mitchell Dep., at 346; Barger Dep. I, at 95

1 Mr. Mitchell admitted that he heard “grumblings” from field representatives about the
2 financial burden of the contributions. Mitchell Dep., at 340-342. To mitigate any possible
3 burden, Mr. Mitchell suggested that field representatives stagger their contributions by writing a
4 different check each week to a different candidate. See Mitchell Dep., at 304-307. Mr. Mitchell
5 also advised new hires, who received a lower probationary salary, that they could contribute less
6 than other field representatives. See *id.* at 309-311. Indeed, Mr. Mitchell did not solicit
7 contributions from some new hires in part because of their lower salary. See *id.* at 320-322.

8 KSDCC’s Executive Staff also contends that no field representative was ever fired or
9 otherwise disciplined for refusing to contribute or contributing less than the suggested amount.
10 See Barger Dep. I, at 86-88, 96; Landers Dep., at 71-72; Mitchell Dep., at 334-336. A few field
11 representatives support this contention, denying that they were pressured to contribute. See, e.g.,
12 Coomes Dep., at 52-53. Nonetheless, even the field representatives who assert that they
13 contributed voluntarily voiced comments about their lack of control over the contributions. For
14 example, one field representative who testified that he voluntarily gave to all candidates later
15 acknowledged that he would have preferred to have given more money to candidates located
16 where he lived and less to those candidates outside his area. See Coomes Dep., at 54-55; 67-69.
17 Moreover, despite the purported voluntary nature of the contributions, no field representative
18 ever declined the “opportunity” to contribute.

19 **F. Membership Communications**

20 Each election cycle, KSDCC makes communications to its members expressly
21 advocating the election of its endorsed candidates. During federal election years, these
22 communications have included express advocacy on behalf of federal, state and local candidates.

23 According to Mr. Mitchell, before each general election, KSDCC distributes a special
24 edition of its quarterly newsletter to its 4,000 members that focuses on the upcoming election.

1 See Mitchell Dep., at 451-52. These special edition newsletters contain language expressly
2 advocating the election of clearly identified federal candidates. For example, the special edition
3 newsletter for October 2000, which is contained in KSDCC's 2000 UBC Report, identified
4 federal candidates with strong labor records and expressly urged the membership to vote for
5 "labor's friends" on election day. See UBC Report (KSDCC 01040-01235). This newsletter
6 also included information regarding the union's endorsed state and local candidates; however,
7 the newsletter devoted more space to federal candidates.

8 In addition to the newsletter, KSDCC conducts a phone bank at the main office in
9 Frankfort, which typically takes place just days before each general election and encourages
10 members to vote for the candidates supported by the union. In 2000, KSDCC also began sending
11 taped messages to its members through an automated telephone system. The messages are read
12 by federal and state candidates, during which each candidate asks union members for their
13 support on election day.

14 Finally, KSDCC conducts member-targeted mailings and phone banks through the local
15 union offices. Shortly before the general election, each local union sends out a mailing and
16 conducts a phone bank urging members in the local union's geographical area to vote for
17 KSDCC's endorsed or otherwise targeted candidates. See Mitchell Dep., at 444, 448, 453, 457;
18 see also Barger Dep. II, at 18. For example, in October 2000, local unions sent mailings that
19 included cover letters asking members to vote on election day and identified the federal
20 candidates endorsed by the union. See 2000 UBC Report. The mailings also enclosed campaign
21 literature from the AFL-CIO, which included issue comparisons between the endorsed federal
22 candidates and their opponents and stated which candidates are "recommended" by the union on
23 election day. See *id.*

IV. LEGAL ANALYSIS

A. KSDCC MADE PROHIBITED IN-KIND CONTRIBUTIONS TO
FEDERAL CANDIDATES

In its effort to win access and influence, KSDCC provided free labor to federal candidates during at least the 1998, 2000, and 2002 election cycles. The union employees who provided this free labor did so at the direction of the union and as part of their job responsibilities. Importantly, despite their reluctance, no field representative ever refused an assignment to work on campaigns, and at least a few field representatives felt that they would be fired or suffer other adverse consequences if they failed to participate. Thus, by requiring that field representatives work for federal campaigns, KSDCC provided something of value to the recipient committees, which would constitute in-kind contributions to those committees in violation of the prohibition against contributions from labor organizations set forth in 2 U.S.C. § 441b.

Even if field representatives had not been pressured or coerced by the respondents into providing services to federal candidates, the compensation paid by KSDCC to the field representatives during the time they spent working on campaigns would still constitute contributions from KSDCC to those candidates in violation of 2 U.S.C. § 441b unless one of the following conditions were met: (1) the field representatives made up the time taken to provide services to the campaigns within a reasonable time; (2) the union paid the field representatives on commission or only for the work actually performed and the employee's time was considered his or her own to use as he or she sees fit; or (3) the field representatives used bona fide vacation time or other earned leave. *See* 11 C.F.R. § 100.7(a)(3). None of these conditions exist here.

First, the field representatives made little or no attempt to make up the time they spent working for their assigned candidates. This conclusion is supported by their timesheets and

1 weekly activity reports, which indicate that, during at least the last eight weeks before each
2 general election, field representatives failed to work a sufficient number of additional hours to
3 maintain a full workweek with non-campaign-related activity. Indeed, certain field
4 representatives acknowledged that they did not make up their hours during campaign season.
5 Moreover, it does not appear that KSDCC made *any* attempt to ensure that field representatives
6 made up their work hours.

7 Second, KSDCC did not pay field representatives on commission or only for the non-
8 political work actually performed; rather, the union paid field representatives by weekly salary.
9 Further, the evidence does not support the view that each field representative's time – whether
10 day, night or on weekends – was his or her own to use as he or she saw fit. The union required
11 field representatives to work a full workday or otherwise request leave, and representatives were
12 on-call for work on nights and weekends. As one field representative described, it was difficult
13 to distinguish between union time and personal time because field representatives had no set
14 hours and frequently worked nights and weekends.

15 Finally, field representatives did not use bona fide vacation time or other earned leave to
16 account for the time they spent working on federal campaigns. Mr. Mitchell testified that he did
17 not recall any instance in which a field representative used vacation time or unpaid leave in
18 connection with his or her campaign activities, except vacation taken on election day. *See*
19 Mitchell Dep., at 475. Moreover, the timesheets and weekly activity reports confirm that field
20 representatives did not request leave, whether paid or unpaid, for campaign activities. Thus,
21 having not met the conditions set forth in 11 C.F.R. § 100.7(a)(3), and having directed union
22 employees to work for federal candidates, KSDCC made in-kind contributions in violation of
23 2 U.S.C. § 441b.

Moreover, the evidence indicates that these violations were knowing and willful. The respondents acknowledge that they had been aware for many years that the union was prohibited by law from providing compensation to union employees for the time they spent working on federal campaigns. Despite this knowledge, however, KSDCC made working for federal campaigns on union time part of each field representative's job responsibilities. The respondents' knowledge regarding the extent of this work can be shown by the fact that the field representatives reported their activities to the Executive Staff and Mr. Mitchell one or more times per week during campaign season, submitted timesheets and weekly activity reports documenting how much time they spent on "membership education" and, from time to time, received specific instructions from Mr. Mitchell and the Executive Staff to participate in various activities on behalf of federal candidates.

The knowing and willful nature of the respondents' conduct can also be inferred from the use of the term "membership education," a misleading coding system that effectively concealed the true extent of the field staff's federal campaign activities. As discussed previously, some field representatives explained that they believed or suspected that the term "membership education" has been used specifically to hide campaign activity. Equally troublesome, KSDCC's political director offered no explanation and, instead, testified that he has "no idea" why the term has been used. Further, any explanation that participation in campaign activities was not as important as the field staff's traditional organizing responsibilities appears greatly undermined by the amount of time and resources KSDCC devoted to its endorsed candidates. KSDCC's desire for detailed information about campaign activity also appears clear from the fact that Mr. Mitchell instructed each field representative to report to him orally on a weekly basis regarding

1 their campaign activities and, in instances where representatives failed to do so, contacted them
2 to inquire about their activities.

3 Given the inadequate explanations for why the term has been used to document political
4 activity and the fact that field representatives assisted federal campaigns on union time despite
5 the union's knowledge that this activity was prohibited by law, it appears that the term
6 "membership education" was likely intended to conceal the extent of KSDCC's federal
7 campaign activities. This conclusion is consistent with a report from a former field
8 representative that Mr. Landers told him in the context of "membership education," "You don't
9 put it on paper if you don't want it, the trail."³⁵

10 Accordingly, this Office is prepared to recommend that the Commission find probable
11 cause to believe that Kentucky State District Council of Carpenters, Steve Barger, Don Mitchell
12 and Thomas Schulz knowingly and willfully violated 2 U.S.C. § 441b.

³⁵ It also appears that the union's efforts to conceal campaign activity may have continued after receiving the Commission's May 10, 2002 Subpoena and Order. During the investigation, the Commission received information indicating that, in the Fall of 2002 and possibly in 2000, KSDCC required that its field representatives submit written political progress reports to Mr. Mitchell, which were intended to be separate and apart from their timesheets and weekly activity reports. KSDCC specifically instructed field representatives to send these reports to Mr. Mitchell's office in Paducah but, unlike other written reports requested by the union, not to Mr. Barger at the union's main office in Frankfort. The Commission specifically requested copies of these reports, which apparently contained information about the status of each representative's assigned campaigns, the activities each representative and his or her volunteers participated in during the reporting period and all planned future activities. *See Mitchell Dep.*, at 196-203; *see also Mitchell Dep. Exhibit No. 8*. In response to this request, counsel for the respondents stated by letter dated August 22, 2003 that the union never requested written reports from field representatives regarding campaign activities, and that Mr. Mitchell obtained information from representatives generally by telephone. During his deposition, however, Mr. Mitchell acknowledged that he requested such reports in September 2002 but testified that he threw out all written political progress reports prepared by field representatives after the 2002 General Election. He further testified that the written reports were short-lived because he instructed field representatives to stop preparing the reports within a matter of weeks. *See Mitchell Dep.*, at 209-10, 216. According to Mr. Mitchell, the reason for this instruction was that not all field representatives provided reports on a consistent basis, and he grew tired of waiting for them. *See id.* At least two field representatives stated, however, that the union stopped the reports because a new employee sent the written reports to the main office in Frankfort by mistake and the union did not want the documents in the main office. Whatever the reason for stopping the written reports, Mr. Mitchell destroyed or discarded the written reports sometime after receiving notification of the Commission's reason to believe findings and the Commission's Subpoena and Order. *See Mitchell Dep.*, 233-40. During discovery, the Commission requested that KSDCC retrieve these documents from its computer system or from the individual field offices; however, KSDCC failed to produce these documents and advised that the documents may have been deleted from the union's computer system.

**B. KSDCC COERCED AND FACILITATED CONTRIBUTIONS TO
FEDERAL CANDIDATES**

During election years, KSDCC tried to curry favor with federal officeholders and candidates by funneling contributions from its employees to their campaigns. KSDCC's leadership knew that the union itself could not legally contribute to candidates, so they forced field representative to contribute through a so-called "voluntary" contribution process. Every aspect of this process ran afoul of the law. Beginning with the threats and intimidation to force employees to make contributions, and ending with the bundling and forwarding of contributions to candidates, KSDCC's actions violated the Act's prohibition on union contributions. *See* 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii).

1. KSDCC Coerced Contributions from its Employees

As a labor union, KSDCC may not coerce individuals to make contributions to federal candidates. *See* 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f)(2)(iv). Examples of improper activity include threatening detrimental job action or any other financial reprisal. *See id.* Here, the evidence shows that KSDCC did indeed coerce and threaten its employees to contribute to federal candidates. Numerous field representatives have stated that they felt pressured to make contributions. This pressure was exacerbated by the precarious finances of many field representatives who reportedly provided the sole financial support to their families. These employees thus depended on KSDCC not only for their current paychecks, but for future union jobs as well. Consequently, when the union asked someone to make a contribution, that person opened up his checkbook, not necessarily because he wanted to contribute, but because he feared losing his job if he failed to do so. Most tellingly, not a single field representative declined KSDCC's requests for contributions.

1 KSDCC's claim that all employees contributed voluntarily is contradicted by statements
2 from field representatives, documents provided by the union, and even the testimony of its own
3 leadership. For example, at the direction of Mr. Barger, the union maintained a highly structured
4 method of monitoring contributions, such as creating records that listed the names of each field
5 representative, which were crossed off when that person sent his contribution check to the office.
6 See KSDCC 00301. These checklists show how the union strived to ensure that each field
7 representative contributed. Furthermore, other union leaders such as Don Mitchell and Jerry
8 Landers admit that they placed follow-up calls to field representatives who had not contributed
9 by the deadline. Although Mr. Mitchell and Mr. Landers deny that they pressured anyone, the
10 fact that supervisors repeatedly contacted their subordinates demonstrates the union's systemic
11 coercion of its employees.

12 Overall, an investigation has confirmed that an atmosphere of intimidation existed during
13 campaign seasons, during which time employees were pressured to contribute to federal
14 candidates endorsed by the union. Field representatives had no input on which candidates to
15 support or the amount of the contribution; those decisions were made by KSDCC's leadership.
16 Moreover, field representatives reasonably believed that they would lose their jobs or face other
17 reprisals if they failed to contribute. This coercive atmosphere exists to this day, as a few field
18 representatives declined to answer questions during the investigation because they feared
19 retaliation.³⁶ One former employee, for example, admitted to being "really scared" to speak
20 about this issue. Thus, although some field representatives claim that they contributed

³⁶ The coercive atmosphere may be further shown by the initial insistence of Mr. Barger and Mr. Schulz that they attend the depositions of various KSDCC personnel. After considerable discussion, the respondents later backed away from this position after this Office made clear that under no circumstances would Barger and Schultz be allowed to attend depositions of the employees they allegedly coerced and intimidated. Nevertheless, KSDCC's counsel represented these employees at their depositions, despite the seemingly obvious conflict of interest.

1 voluntarily, their statements may be tainted by fear of retribution for cooperating with the
2 Commission.³⁷

3 Viewed in totality, the evidence shows that KSDCC improperly pressured and coerced
4 employees to contribute to federal candidates. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f)(2)(iv).
5 Moreover, the evidence demonstrates that KSDCC's officers were aware of and participated in
6 this scheme to extract money from its employees. Finally, the evidence has shown that
7 KSDCC's leaders knew this activity was illegal. *See* UBC Political Manuel, Legal Do's and
8 Don'ts of Federal Campaigns, at 66 ("DON'T raise money directly for the candidate from the
9 union members."). Accordingly, this Office intends to recommend that the Commission find
10 probable cause to believe that the KSDCC respondents knowingly and willfully violated
11 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f).

12 **2. KSDCC Facilitated and Transmitted Contributions from its Employees**

13 Even if KSDCC had never coerced an employee to contribute to a federal candidate,
14 KSDCC still would have violated the Act by facilitating the purportedly voluntary contributions.
15 *See* 11 C.F.R. § 114.2(f)(1). Labor organizations are prohibited from facilitating the making of
16 contributions, including using their resources or facilities to engage in fundraising activities in
17 connection with any federal election. *See id.* Likewise, labor organizations are prohibited from
18 acting as a conduit for contributions to candidates. *See* 11 C.F.R. § 110.6(b)(2). Here, KSDCC
19 conceded not only that it actively solicited contributions to federal candidates using union
20 resources, but that it collected and forwarded earmarked contributions to the candidates as well.

³⁷ While this investigation was being conducted, one field representative informed this Office that at a union meeting, Mr. Barger spoke disparagingly about the Commission and admirably about field representatives who purportedly told the Commission "to go fuck themselves."

1 This is precisely the activity that the Commission has determined to be inconsistent with the Act.

2 See Advisory Opinion 1986-4 (Armstrong); AOR 1976-92 (Boeing); MUR 5208 (Amboy).³⁸

3 KSDCC's facilitation permeated all aspects of the contributions process: it asked its
4 employees to contribute, it told them whom to support, it recommended an amount, it collected
5 the contributions, and it bundled and sent the contributions to candidates.³⁹ Evidence of
6 KSDCC's all-encompassing role can be found in the dozens of documents produced by the union
7 in response to the Commission's subpoenas. Among these documents are checklists for each
8 candidate, which administrative staff marked off when employees' checks were received at the
9 office. See KSDCC 00301. Additionally, KSDCC copied all checks received by its employees
10 and CLIC. See KSDCC 00251. KSDCC then prepared summaries listing how much each
11 employee gave to each candidate. See KSDCC 00329. Finally, using union stationery, KSDCC
12 drafted memos to candidates listing the names and aggregate contributions from its employees
13 and CLIC.⁴⁰ See KSDCC 00300.

14 From 2000 through 2002, KSDCC facilitated and served as a conduit for federal
15 contributions totaling approximately \$65,000. Because KSDCC facilitated the making of these

³⁸ The Armstrong Advisory Opinion (1986-4) is particularly on point because it involved a corporation that wanted to begin a "voluntary" contribution program. Under this proposed system, the corporation would encourage its employees to contribute to federal candidates, monitor their participation, influence their decisions on how and to whom to contribute, collect their contributions, and forward them to candidates. The Commission concluded that Armstrong's proposal would be prohibited under the Act because the corporation would serve as a conduit for earmarked contributions. KSDCC's process for soliciting, collecting, and mailing contributions is materially indistinguishable from Armstrong's program. Furthermore, although the Commission noted that Armstrong may be able to institute its program by creating a separate segregated fund, KSDCC has never maintained its own separate segregated fund.

³⁹ Although KSDCC may claim that its employees volunteered their time to collect contributions, "[t]he 'individual volunteer activity' exemption does not, however, extend to collective enterprises where the top executives of a corporation direct their subordinates in fundraising projects . . . or solicit whole classes of corporate executives and employees." MUR 3540 (Prudential Securities), Conciliation Agreement.

⁴⁰ The regulations make an exception for labor organizations to serve as a collecting agents for contributions to their separate segregated funds, but no similar provision exists for unions like KSDCC to serve as a conduit for earmarked contributions from a separate segregated fund to a federal candidate. See 11 C.F.R. § 110.6(b)(2)(ii). Thus, in addition to serving as a conduit for contributions from its employees, KSDCC is also liable for improperly forwarding CLIC's contributions to federal candidates in Kentucky.

1 contributions and delivered them directly to candidates' campaigns, the entire amount constitutes
2 a prohibited contribution. *See* 2 U.S.C. § 441b(a). Additionally, the evidence has shown that
3 KSDCC's officers knew of and consented to these prohibited contributions. Therefore, based on
4 all the reasons stated, this Office is prepared to recommend that the Commission find probable
5 cause to believe that the KSDCC respondents knowingly and willfully violated 2 U.S.C.
6 § 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii).

7 **C. KSDCC FAILED TO REPORT THE COSTS OF MEMBERSHIP**
8 **COMMUNICATIONS CONTAINING EXPRESS ADVOCACY**

9 Since at least 1998, KSDCC has made communications to its members expressly
10 advocating the election of the union's endorsed federal candidates. As discussed previously,
11 these communications included election newsletters, direct mailings, and phone banks targeting
12 KSDCC's approximately 4,000 members. Each communication expressly urged members to
13 vote with direct reference to those candidates whom the union recommended the membership
14 vote for. *See FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249-50 (1986). In addition,
15 before the 2000 and 2002 general elections, KSDCC employed an automated telephone system
16 to send taped messages read by endorsed federal candidates to union households, during which
17 each candidate asked members and their families for support on election day.

18 Although KSDCC failed to submit documentation regarding the costs associated with
19 these communications, the evidence indicates that these costs likely exceeded the \$2,000
20 threshold necessary to trigger the reporting requirements set forth in 2 U.S.C. § 431(9)(B)(iii).⁴¹
21 Indeed, the printing and postage costs necessary to send the direct mailings and election
22 newsletters to approximately 4,000 members before the 1998, 2000, and 2002 general elections

⁴¹ The Commission requested documentation concerning these costs, however, as of the date of this Brief, KSDCC has provided no documents in response to this request. Instead, KSDCC has made only the general assertion that it does not believe that any of its mailings reached the \$2,000 threshold.

1 by themselves likely exceeded \$2,000 per general election. In addition to these costs, KSDCC
2 likely incurred expenses (administrative, long distance, etc.) to conduct the two phone banks –
3 one from its main office in Frankfort and the other from the local field offices – before each
4 general election. Finally, KSDCC likely incurred expenses to set up and administer the
5 automated telephone system, which sent taped federal candidate messages to union households
6 before the 2000 and 2002 general elections.

7 Accordingly, this Office is prepared to recommend that the Commission find that
8 Kentucky State District Council of Carpenters violated 2 U.S.C. § 431(9)(B)(iii) by failing to
9 report the costs of membership communications containing express advocacy.

10 **V. GENERAL COUNSEL'S RECOMMENDATIONS**

1. Find probable cause to believe that Kentucky State District Council of Carpenters, Steve Barger, Don Mitchell and Tom Schulz knowingly and willfully violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 114.2(f) and 110.6(b)(2)(ii); and
2. Find probable cause to believe that Kentucky State District Council of Carpenters violated 2 U.S.C. § 431(9)(B)(iii).

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